

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIFFANY L MCCAULEY
Claimant

REMEDY INTELLIGENT STAFFING
Employer

APPEAL 23A-UI-07533-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/18/23
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Remedy Intelligent Staffing Inc, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) July 24, 2023 (reference 02) unemployment insurance (UI) decision. The decision allowed Ms. McCauley REGULAR (state) UI benefits because IWD concluded she worked for the employer on a temporary basis until June 9, 2023, she had good cause for not notifying the employer within three days of June 9, and she notified the employer as soon as she reasonably could. On August 11, 2023 the Iowa Department of Inspections, Appeals, and Licensing, UI Appeals Bureau mailed a notice of hearing to the employer and Ms. McCauley for a telephone hearing scheduled for August 25, 2023.

The undersigned administrative law judge held a telephone hearing on August 25, 2023. The employer participated through Aaron Elliott, personnel supervisor. Ms. McCauley did not participate in the hearing. The undersigned took official notice of the administrative record and admitted Employer's Exhibit 1 as evidence.

ISSUE:

Did the employer discharge Ms. McCauley from employment for disqualifying job-related misconduct?

Did IWD overpay Ms. McCauley UI benefits?

If so, should she repay the benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. McCauley began working for the employer on November 11, 2022. She worked as a full-time packing technician assigned to work for employer Continental Manufacturing Chemist (Continental). Her employment ended on June 9, 2023.

On Friday, June 9, Continental emailed the employer that Ms. McCauley had not been at work since Monday that week. The employer's policy requires employees to notify the employer each day of absences. Ms. McCauley did not do so June 6-9.

¹ Appellant is the person or employer who filed the appeal.

Mr. Elliott called Ms. McCauley. No one answered and Mr. Elliott was not able to leave a voice message as the voice mailbox had not been set up. About two hours later, Mr. Elliott called Ms. McCauley again. No one answered and Mr. Elliott left a voice message. A bit later, Mr. Elliott called Ms. McCauley again. This time a person answered said "hello." Mr. Elliott identified himself and asked the person if they were Ms. McCauley. The call ended.

The following Monday, Ms. McCauley contacted the employer. Mr. Elliott spoke with Ms. McCauley and told her that her job was over because she did not attend work for four consecutive days. Ms. McCauley asked for another chance. Mr. Elliott declined.

IWD has not paid Ms. McCauley any REGULAR (state) UI benefits on her current UI claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Ms. McCauley's separation from employment was without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer.² A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention.³ "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular.⁴

² Iowa Code § 96.6(2).

³ *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

⁴ *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

In this case, Ms. McCauley did not attend work June 6, 7, 8 or 9 and she did not notify the employer, Remedy Intelligent Staffing. Ms. McCauley did not participate in the hearing to explain what happened. Based on the evidence in the record, Ms. McCauley's leaving was not for a good-cause reason attributable to the employer according to Iowa law. Ms. McCauley is not eligible for UI benefits.

The undersigned further concludes that IWD did not overpay Ms. McCauley any UI benefits.

Iowa Code §96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Since IWD has not paid Ms. McCauley any UI benefits on his claim, IWD has not overpaid Ms. McCauley.

DECISION:

The July 24, 2023 (reference 02) UI decision is REVERSED. Ms. McCauley voluntarily left her employment without good cause attributable to the employer. Ms. McCauley is not eligible for UI benefits until she has worked in and been paid wages for insured work equal to ten times her weekly UI benefit amount, as long as no other decision denies him UI benefits.



Daniel Zeno
Administrative Law Judge

August 29, 2023
Decision Dated and Mailed

DZ/jkb

APPEAL RIGHTS. If you disagree with this decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de **presentar una petición de revisión judicial en el Tribunal de Distrito** dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.